The National Evil of Divorce

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By Bernard J. Otten, S. J.

I.

Mr. James Bryce, in his able work on JURISPRUDENCE AND HISTORY, makes this very apposite remark: "The material progress of the world, the mastery of man over nature through knowledge of her laws, the diffusion of knowledge and the opportunities of acquiring it, are themes which ceaselessly employ the tongues of speakers and the pens of journalists, while they swell with pride the heart of the ordinary citizen. But they are not the things upon which the moral advancement of mankind or the happiness of individuals chiefly turns. They co-exist, as statistics of recent years show, with an increase over all or nearly all civilized countries, of lunacy, of suicide and of divorce."

Of these three evils, here set down as obstacles to the moral advancement of mankind and the happiness of individuals, divorce is beyond question the most ruinous. It not only wrecks the lives of the individuals who are parties to the scandalous proceedings, but it threatens the very existence of civilized society by the inevitable destruction of family life, and gives rise to a generation of men and women wholly devoid of the most essential virtues of good citizenship—reverence for parents, love of home, and respect for authority. Hence, although the divorce problem has of late years been so widely discussed, it will not be out of place to subject it to further examination, at least in so far as it affects our own country.

Many thoughtful and observant men see in our divorce system the certain forerunner of social and political ruin. The history of Greece and Rome and other nations of pagan antiquity, they contend, foreshadows but too plainly what will be our ultimate fate, if present conditions are allowed to continue much longer as they are. Of old the Roman poet wrote of his own degenerate country:

"Our times, in sin prolific, first
The marriage bed with taint have cursed,
And family and home:
This the fountain-head of all
The sorrows and the ills that fall
On Romans and on Rome."

The same our poets may write of divorce-ridden America. The thinking portion of our people realized this years ago, and have in consequence bestowed their best efforts upon devising a remedy. As early as 1881, there was organized in New England a Divorce Reform League, which, in 1885, became national in name and scope. In 1891, six State Committees were formed to prepare the way for uniform divorce legislation; and these six were in 1895 increased to twenty-eight, holding their yearly conventions at which ways and means were discussed to arrest the divorce plague. It was even suggested to amend the Constitution so as to enable Congress to legislate in this matter for the whole country, as it already does for the District of Columbia and the Territories. Protestant Churches, too, have taken up the question and considered the ad-

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visability of making marriage practically indissoluble. Thus, among others, the Bishops of the Episcopal Church, when convened some years ago in the Pan-American Conference, seriously discussed the proposition of forbidding divorce altogether in their communion, although, as might have been expected, there was a strong opposition on the part of some, and no final agreement was reached.

Legislation has also been brought to bear upon this matter. Congress has radically changed the divorce laws of the District of Columbia, retaining only one of the four grounds for absolute divorce formerly allowed. Some of the States have prohibited solicitation of divorce business by any form of advertising; others have lengthened the term of residence in the State before application can be made to the divorce courts; others, again, have extended the time that must elapse before divorced persons are allowed to enter into a new marriage contract. All this is indicative of the growing anxiety with which the present condition of things fills the minds of persons to whose keeping the country's best interests have been entrusted. They begin to realize that the time for decisive action has come.

Nor can Catholics stand aloof in the nation's efforts to find a solution of this problem. For although Christ's authoritative injunction, "what God hath joined together, let no man put asunder," is put forward by their Church as a law that admits practically of no exception, nevertheless, as daily experience shows, there are many Catholic men and women who endeavor to throw off in the divorce courts the burden which they freely assumed before the altar of God. In their heart of hearts they may still believe that the State has no power to sever the marriage bond, yet, blinded by a vitiated public opinion, they brush aside their conscientious scruples and shamelessly urge the pretended privilege of American citizens to be freed from a yoke that has begun to gall. In many of our large cities this is so common an occurrence that it has even ceased to elicit comment. Hence, it is no longer, as it used to be a few decades ago, the common interest we take in our country's welfare that calls us to action along these lines, but the eternal well-being of those who are under the Church's immediate spiritual guidance. The divorce problem in this country is fast assuming a Catholic aspect, and in consequence Catholics have a reason of their own for exerting themselves to find a proper solution.

II.

Most civil governments that presume to pass divorce laws make provision for two different kinds of divorces, limited and absolute. The former, or limited divorce, corresponds to the separation from bed and board as recognized by the Catholic Church, when conditions are such that the continuance of family life becomes a moral impossibility. Of this we need not speak on the present occasion; because it has played so insignificant a part in the divorce proceedings of this country, that we may regard it as a negligible quantity. The latter, or absolute divorce, is defined

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by our legislators as "the disruption, by the act of law, of the conjugal tie made by a competent court on due cause shown." The legal effect of this divorce is not only to make the parties to it independent of one another as regards habitation, property, and other civil consequences of marriage, but to restore them to the condition of single persons, commonly with the right to enter a new marriage contract. It is this absolute divorce that has obtained a firm foothold in nearly every State of the Union, and by its terrible ravages fills thinking men with alarm for the safety of their country. Hence in the following discussion we shall speak of divorce only in this absolute sense.

In Colonial days, divorces were granted almost exclusively by acts of the Colonial Legislature, and as this proceeding was necessarily slow, expensive, and public, divorces were few in number. But since the birth of the Republic, legislative divorces have fallen into disfavor and judicial sentences have supplanted legislative acts. Moreover, each State now legislates for itself in this matter, the Federal Government having jurisdiction over divorces only in the District of Columbia and the Territories not yet admitted to statehood. As a result, there are at present within the boundaries of the United States some half a hundred different codes of divorce laws. Besides, jurisdiction over divorce cases is usually conferred, not on special courts, but on the law-courts, district, circuit, superior or inferior, as the case may be; and as these courts grant divorces on trials or hearings, not only in large cities, but also at each county seat, there are nearly three thousand courts scattered over the length and breadth of the land, where with little or no formality, man may put asunder what God hath joined together.

In consequence of this, Mr. Bryce's scathing criticism of our divorce legislation, to the effect that "it represents the saddest and strangest body of legislative experiments in the sphere of family law, which free, self-governing communities have ever tried," finds its justification in facts of almost daily occurrence. In certain parts of the country, especially along the Pacific Coast and in the Middle Western States, divorce has become almost as common as marriage. Not rarely the number of divorce sentences granted on a given day is as great as that of marriage licenses taken out on the same day. Nay, sometimes divorces are considerably in excess of the corresponding marriages. Thus, in St. Louis, not long ago, fifty-four divorces were granted in one day, whereas the marriage licenses taken out on the same day were but twenty-eight. Similar stories may be read in the court records of almost any large city West of the Mississippi.

It is true, divorces are apt to come in batches, depending as they do upon the leisure of the court, whilst marriages are more evenly distributed; yet, although this leaves hope that not every marriage is sooner or later broken up by a sentence of divorce, it nevertheless cannot conceal the painful fact that a vast number of unfortunates, who had pledged life-long fidelity in the days of their youth, seek and find in the divorce courts the separation which death alone was meant to effect. Hence it is not so much the

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existence of divorce in our midst, but rather its frequency that obtrudes itself upon our notice and that has lately become the cause of the gravest apprehension. Not that this frequency is altogether new and unexpected, for ever since the Hon. Carroll D. Wright, late Commissioner of Labor, issued in 1887 his official report of marriages and divorces, has the country been apprehending a large yearly increase of this miserable home-wrecking business; still the rate of increase has been so appalling, that the nation is now fairly standing aghast at the terrible wreckage piling up with constantly gathering speed.

According to the report just referred to, the total number of divorces granted in the United States from 1867 to 1887, during a period, therefore, of twenty years, was 328,716. This gives us a yearly average of 16,435. However, as the population is increasing very fast, and divorces are increasing faster still, this is only a fraction of our present annual output. If we compare year with year, we find that divorces are increasing more than twice as fast as the population. From the 9,937 divorces which were granted in 1867, the number for each successive year has steadily grown, until in 1886 it was 25,535, representing an increase of 157 per cent in twenty years. As the population increased during that same period about 60 per cent, it follows that divorces increased more than two and one-half times as fast as the population.

Since then the disproportion for the two rates of increase has become even more striking. Thus, as shown in Census Report issued in 1910, during the twenty years from 1886 to 1906, there were granted in the United States 945,625 divorces, or nearly three times as many as had been granted during the preceding twenty years. Nor is this at all accounted for by a corresponding increase in population. For whilst in the first twenty-year period, from 1866 to 1886, there were 38 divorces per 100,000 population, in the second, from 1886 to 1906, there were 73; hence the rate at which divorces increase has practically doubled during the last twenty years. Bearing this in mind, we need not be surprised at the statement recently made at a meeting of the New York State Marriage and Divorce Commission, that during the year just ended, 1912, "there were granted in this country over 100,000 divorces." Nor at the other statement, made on the same occasion, that "in the last forty years 3,700,000 adults were separated by divorce in this country, and more than 5,000,000 persons were affected by these cases."

These figures, then, represent the ghastly array of matrimonial failures recorded in the last forty years. Practically no civilized country on earth can show anything like it. Canada, our next-door neighbor, had in 1904 only 19 divorces, and the total number of divorces granted since 1867 was but 356. Some European countries have, indeed, made greater progress in the home-wrecking business; yet all things considered, they are no match for us. Taking the average of per 100,000 population for 1900 and 1901, and applying this to the countries in which divorce is most prevalent, we find the following: Netherlands 10; Belgium 11; Sweden 13; Prussia 15; Denmark 17; Norway 20; France 23; Saxony 29; Switz-

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erland 32; United States 73. Hence, with us divorce is more than twice as frequent as it is anywhere in Europe. In fact, the only country, at all civilized, where conditions are worse than they are in our own, is Japan, which has 215 divorces per 100,000 population. It is only, therefore, among pagan nations that we can hold up our heads without shame.

III.

Now what is the social and moral aspect of these conditions prevailing through the length and breadth of our fair country? It is disheartening in the extreme. With this sword of Damocles hanging over every hearthstone, domestic virtue is fast disappearing from the home circle. Mutual love and trust and generous forbearance must necessarily give way before coldness, suspicion, and selfish independence. What trustful surrender can there be on the part of the wife, when even from the day of her marriage she must reckon with the possibility of being discarded by her husband for some one who happens to appeal more strongly to the cravings of his animal nature? What motive is there on the part of the husband to round off the angularities of his character, when persistence in them offers him the means to free himself from the yoke that begins to gall? As the recognized necessity of spending their lives in one another's company is the strongest of motives with both husband and wife to live up to the best that is in them, so the well-founded hope of deliverance from a yoke that has become distasteful is an ever present incentive to accentuate faults of character to such a degree that family life becomes an intolerable burden. What room is there, under such conditions, for those many domestic virtues that make each true home "the dearest, sweetest spot on earth"?

Similarly, whilst divorce is thus within easy reach, there is an end of all social virtues, and even of the common decencies of society. Love intrigues of married men and women have long since ceased to inspire that horror with which the Christian world had been taught to look upon them by the bearers of Christ's message of salvation. They still remain, if you will, a sort of contraband diversion, that must be indulged in more of less by stealth, but they are no longer treated as a matter that need seriously trouble the conscience of our divorce-ridden society. All such irregularities are set down as the natural manifestations of soul-affinities, the untimely discovery of which one may indeed regret but is hardly called upon to condemn. As a necessary consequence, these love intrigues are becoming more frequent every day, and by their increasing frequency are fast bringing it about that social morality is little more than a name.

Nor does this wretched divorce business present a less disheartening aspect when we view it precisely as it is, the work of the State. For not only does the State, by an act of the law, destroy the homes that were meant to be so many sources of the nation's strength, not only does it encourage domestic dissensions and conjugal infidelity by setting upon them the premium of deliverance

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from uncongenial surroundings; but, by professing to restore husband and wife to the condition of single persons, it authorizes them in the most solemn manner to enter into and spend their lives in a state of public concubinage. For say what we will, though the State declares the first marriage dissolved, the bonds which made the contracting parties two in one flesh shall not be disrupted till grim death claim one of them as his own. The law, indeed, says that the conjugal tie is disrupted by the action of the court, but the word of the law has no force except it be approved by the Supreme Lawgiver, and the Supreme Lawgiver declares in unmistakable terms that man may not put asunder what God hath joined together.

This incompetency of the State to sever the marriage bond, although it is *de facto* most clearly set forth in the teaching of Christ, does ultimately not depend for its demonstration on the views of any particular religious denomination. It is a necessary inference from the laws which nature enacted for the well-being of the family, and as such it is antecedent to and independent of the teaching of revelation. It is true, indeed, that the Author of the family could have removed this incompetency by a positive communication of the requisite powers to the State, but such communication is neither invoked by the State nor can it be inferred from any revealed statement of doctrine as applicable to the Christian Dispensation. In fact, as far as revelation comes in question, the indissolubility of the marriage bond is placed absolutely beyond all State interference. For when Christ said, "What God therefore hath joined together, let no man put asunder," He referred not only to marriages between Catholics, but to those between non-Catholics as well, thereby revoking all concessions that had been made in the pre-Christian Dispensation.

Hence if the State deems itself competent to act in this matter, it must first set aside Christ's own positive legislation and then prove its competency from provisions made in the laws of nature. Yet this it cannot do. For even if it overrides the teaching of Christ, it will find nature's laws too explicit to admit of any interpretation that would justify State interference with the permanency of family life. The very fact that the family is in its origin prior to the State is an irrefragable argument that the essential constitution of the family is independent of the State. Now the very essence of the family consists in the union of man and woman, the primary end of which union is the perpetuation of the race. Hence the contract from which this union results must be independent of the State as the union itself, and consequently it must lie beyond the jurisdiction of the State to make or mar. A higher power has called the family into being, has made it what it is, and that power alone can modify, change, or unmake it. No association of men, be that association what it may, possesses the right of interference in this matter; simply because the family is not of its making.

Nor is there any escape from this conclusion by having recourse to the free consent of the parties concerned. Their free consent to the severing of the marriage bond is not only illicit

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but invalid, and therefore it cannot make the State competent to act. Nature, in making provision for the perpetuation of the race, intended not only a social union between man and woman, but a social union that should be perpetual, a union that should be dissoluble only in death. It made the family, therefore, a permanent society. This is, first of all, necessarily inferred from the need which children have, both in the physical and moral order, of the love, protection, help, and guidance of their parents. Children cannot be reared as so many heads of cattle, shut up in a common pen and looked after by a general overseer. They need the self-sacrificing love of a mother and the firm guidance of a father, even after they have reached the age of discretion. It is only from the sacred precincts of a permanent home that brave men and virtuous women can come forth, who, because of their consistent training in domestic virtue, are an honor to human society and a source of strength to the State. Break up the home, and the State itself is laid in ruin.

And even where this primary end of marriage has been attained, where children have left the home of their childhood and established families of their own, nature calls for the continuance of the same relations which, in the days of their youth, made father and mother two in one flesh. This is readily inferred from the secondary end of marriage, which finds its realization in a mutual love and help that naturally grows stronger with the lapse of years. What can be more abhorrent to man's sense of the eternal fitness of things than to see gray-haired men and women, who have for a quarter of a century labored and suffered and prayed together in the closest union established by nature, visit the divorce courts with the deliberate purpose of having their union broken up when the lengthening shadows of life are already pointing to the dawn of eternity's day? The incongruity of it alone loudly proclaims nature's condemnation of so unholy a deed.

Perhaps it will be objected that in some marriages neither the primary nor the secondary end is ever realized, in as much as they are not blessed with offspring nor productive of a heart union that makes them a social blessing; they, therefore, may well be conceived to come within the jurisdiction of the State to dissolve. No, they may not be so conceived. If these marriages are valid from the beginning, as is here necessarily assumed, their stability is provided for by nature's general law, and that law knows no exception save only where the Author of nature Himself intervenes. Moreover, as far as the want of "heart union" is concerned, that depends on the parties' own free action in the matter; if they have a good will, patiently bearing one another's burden, as is required by the very nature of the contract which they freely entered, they can make their union a social blessing in spite of the absence of a strong mutual affection. In a few cases, indeed, there may develop an unbearable antipathy, but they can be provided for by a legal separation that leaves the marriage bond intact.

Hence in so far as the State defines absolute divorce to be

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"the disruption by the act of law, of the conjugal tie," it is without competency to grant such a divorce. And this view is upheld by some of our own judges, independently of their religious persuasion. Thus Mayor Gaynor of New York, whilst on the bench, handed down the opinion that the State does not pretend to sever the marriage tie by the action of the divorce courts, but only declares that the parties are legally free to contract a new marriage. Hence, he continues, if there exists an indissoluble bond which only death can sever, that remains intact by the action of the court. Now such an indissoluble bond certainly exists, and in consequence the second marriage, or any subsequent marriage whilst both parties to the divorce survive, is neither more nor less than legalized concubinage.

And what does this mean for the men and women who, after invoking the assistance of the law in their matrimonial troubles, venture to attempt a new marriage? Why, it means that they make an open profession of a life of sin. And this is especially true of Catholic divorcees. For whilst non-Catholics may or may not be guilty before God, whilst their ignorance of the moral obligations which they took upon themselves on the day of their marriage may or may not be excusable before the all-seeing Judge, this cannot be said of Catholics who have at all been instructed in the faith of their Baptism. The Church does not teach, as did the so-called Reformers of the sixteenth century, that marriage is but a wordly thing and therefore subject to State legislation—she enforces, and always has enforced, the clear and explicit doctrine of her divine Founder, that "whosoever shall put away his wife and marry another, committeth adultery against her; and if the wife shall put away her husband and be married to another, she committeth adultery."

This is terrible. We point the finger of scorn at those whose name and trade may not be mentioned in Christian society; yet what difference is there between them and divorcees who enter into a new matrimonial union whilst their former partners are still living? There is a difference, if you will, but it is only a difference of degree. A few years ago, Congress endeavored to expel from its halls one against whom stood the charge of polygamy; yet every State in the Union, with the exception of South Carolina, legalizes not only polygamy, but polyandry as well, by empowering divorcees to mary again whilst the bonds of their former marriage remain still undissolved. And we call ourselves a Christian nation!

IV.

Nor is this the whole tale of woe. Perhaps the saddest feature of the divorce evil is the misery and shame brought upon the unfortunate offspring of divorcees. Many of them are put away into orphan asylums, many more find their way into our reform schools. In fact, recent investigations show, that from twenty-five to fifty per cent of the children in these schools are there because of the separation of their parents. How many others

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are simply set adrift and finally join the ranks of the ever-growing army of tramps and criminals no one can tell; but indications are not wanting that the number is enormous.

Statistics with regard to the number of children affected by divorce proceedings are somewhat defective, yet from reliable calculations, based partly upon court records, it appears that from 1867 to 1887 over 435,000 were deprived of one or both parents by the direct action of the divorce courts. During the next twenty years, from 1886 to 1906, the probable number is over 750,000. This gives us a grand total of 1,185,000 for forty years. Most of them were under ten years of age, and so they were made to feel in the very morning of their life that their temporal and eternal welfare was to the State and to their unnatural parents practically a matter of indifference—were taught by father and mother and State to follow the promptings of corrupt nature rather than the dictate of right reason, to submit to the tyranny of passion rather than to the authority of law. What a training for future citizenship! What wonder that matters in this respect should go from bad to worse! For as their parents did, so will they do when their time comes; and so the divorce mill keeps on turning, ever turning, grinding the nation into dust.

What has just been said about the children of divorcees suggests another point that throws upon this matter of divorce a much more lurid light. Enormous as is the number of children affected by divorce proceedings in this country, yet if nature were allowed to have her course in the marital relations of divorce candidates, it should be at least twice as great. Whilst under ordinary conditions scarcely 5 per cent of marriages contracted in this country are unfruitful, in the case of divorce candidates unfruitful marriages amount to nearly sixty per cent. What a slaughter of innocents, what an outrage of nature in her most sacred ordinances this implies! Yet one could hardly expect it to happen otherwise. For with many couples divorce is from their very marriage day, if not a foregone conclusion, at least an event that is extremely probable; hence whatever will make the obtaining of a divorce more troublesome must be avoided or be done away with, and so race-suicide becomes the order of the day.

V.

Here it may be well to inquire into the grounds of divorce, so as to determine what bearing they have upon this terrible state of things. With the exception of South Carolina, which does not grant absolute divorce, all the States of the Union admit adultery as a statutory cause for which absolute divorce may be granted. In New York and the District of Columbia this is, properly speaking, the only cause recognized, although divorce may also be obtained for any of the reasons which are legally sufficient for annulment of the marriage. Most of the other States grant absolute divorce for any of the following causes:

1° Conviction of felony.

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2° Cruel and inhuman treatment.
3° Willful desertion, varying from one to seven years.
4° Habitual drunkenness.
5° Neglect to support the wife.

To this list many of the States add other grounds, such as personal indignities, making life burdensome; gross neglect of duty; fraudulent contract; imprisonment in State prison; reasonable apprehension of bodily harm; violent temper, etc.

This is quite a formidable array, and, as a writer on the subject well remarks, offers an escape from every matrimonial difficulty. The wide range of these grounds for divorce becomes more apparent if we take a few concrete cases in which they were interpreted and applied by the courts. For this purpose I have selected from the report of Hon. Carroll D. Wright a number of divorces granted on the plea of cruelty and inhuman treatment. These cases were gathered, not from newspaper accounts, but from the court records, so that we need not hesitate to accept them as genuine.

1° Divorce granted to wife, because she alleged that her husband did not wash himself, thereby inflicting on her great mental anguish.

2° Divorce granted to wife, because her husband got drunk the day after the marriage, causing wife to conceive violent disgust for him. Divorce proceedings began one day after the marriage.

3° Divorce granted to wife, because her husband used tobacco, thereby aggravating her sick headaches.

4° Divorce granted to wife, because her husband cut off her bangs by force.

5° Divorce granted to wife, because her husband pinched her nose till it became red, thereby causing her mortification and anguish.

6° Divorce granted to wife who had married her husband when he seemed on the point of death, but he recovered; hence she asked for a divorce on the plea of cruelty and fraud.

In the cases just enumerated the wife was the plaintiff; here are a few in which the husband appears in that role.

1° Divorce granted to husband, because his wife frequently evinced towards him a violent temper.

2° Divorce granted to husband, because his wife violently upbraided him, saying: "You are no man at all," thus causing him mental sufferings and anguish.

3° Divorce granted to husband, because his wife struck him a violent blow with her bustle.

These are puerile, frivolous, ridiculous reasons; yet grave judges, presumably learned in the law, found them sufficient to justify the severing of the most sacred bonds. Justice must be blind indeed, if it detects no flaw in such proceedings.

So much for causes that depend to a considerable extent on the interpretation of the court; let us now take one that admits of little or no interpretation. Such a one is willful desertion for

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one or more years, according to the provisions of the law. If the fact of desertion is proved, the judge is forced by the law to issue a decree of divorce, however unreasonable it may appear to him from his own point of view. Now desertion is one of the grounds most frequently alleged by divorce candidates. Of the 328,716 divorces granted during the twenty years from 1867 to 1887, 126,676, or 38.50 per cent, were secured on the plea of desertion. During the next twenty-year period the percentage slightly increased, with the result that out of a total of 945,759 divorces, 367,502 were granted for willful desertion.

The mischief caused by this ground, as well as the utter inability on the part of the judge to interfere, was years ago forcibly pointed out by Judge Lord of Massachusetts. Having on one occasion granted several divorces on the plea of desertion, he arose and said with great emotion: "It is shocking to contemplate the state of morals in this great commonwealth that is here to be observed. Has it come to this? I am here to administer the law as it stands. The law says that desertion for three years is cause for divorce. But I clearly see how it operates. A young man and woman agree to get married. They feel that they will live together so long as they find it mutually agreeable so to do, and then by a sort of tacit understanding they can live separate, whereupon one or the other at the end of three years brings in a libel for divorce on account of desertion. The other party makes no opposition, the divorce is granted, and then they are at liberty to do the same thing over again. I say it is terrible to contemplate such a state of morals in this commonwealth!"

Yes, it is terrible! It is shocking! But I wonder what the same judge would have said about a case that came up in Indiana a few years ago. A woman pleaded for a decree of divorce, because her husband had basely deceived her. "When I married him," she said, "I understood that I was only his sixth wife, but since then I have found out that he had already been married nineteen times and had as often been divorced. How can I entrust my life to such a man?" "Oh, you needn't take on so," responded her husband rather prosaically, "you have been married fourteen times yourself, and thirteen of your husbands are still living." This, I suppose, is about as near an approach to the practice of free love as our modern society with its veneering of Christianity will ever tolerate; but even this is a condition of things to all intents and purposes the same as that which disgraced pagan nations before the advent of Christ. The saying of Tacitus, that Roman matrons counted their years by the number of husbands successively divorced, may soon become applicable to certain portions of modern society. And this society calls itself Christian? What a travesty of so sacred a name!

Is it at all to be wondered at, that men and women, with such facts before their eyes, should lose all respect for marriage? Need it be a matter of surprise that they should come to look upon nature's most sacred rite as a sort of pleasant diversion, which

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one may indulge in just to break the monotony of a work-a-day life? That they should regard it as a business venture of minor importance? To make an investment, to enter upon a business career, requires thought, reflection, calculation; but to take a wife, or to accept a husband, may be left to whim and fancy, because if the venture prove a failure it may be terminated forthwith, leaving the interested parties free to try the experiment over and over again till a match is made that gives satisfaction to all.

Hence it is that marriages are contracted between parties who have scarcely had time to form a bowing acquaintance. Chance throws them together; he admires her graceful form, she his manly bearing—it is love at first sight, and such love brooks no delay. Although the maiden have but just discarded her short dresses and the youth be still a mere stripling, the "grande passion" stirs mightily within their bosoms, sets at naught parental objections, batters down judicial misgivings as to age, swears eternal fidelity, and then discovers that somehow it was all a mistake, which for the sake of private happiness and the public good must be rectified in the divorce courts almost before the traditional honeymoon has run its course.

This view may appear extreme, yet it is borne out by facts of almost daily occurrence. Pick up any of our daily papers, and in nearly every instance you will find there an account of some runaway match, matrimonial surprise for friends and parents, separation of husband and wife but recently married, and *id genus omne.* Statistics, as gathered from official records, show that "more separations occurred in the first and second years of married life than in any subsequent years. At the end of the fifth year more than one-half of the total number of separations had taken place."

These ruinous effects of the application of our divorce laws show, beyond the shadow of a doubt, that the laws themselves are defective; and yet, however, glaring that defectiveness may be, it is safe to say that the root of the evil lies deeper—it is radicated in the underlying principle itself. Neither our government, nor any other government, can devise a system of divorce laws that will not in the end make for the nation's undoing. An evil tree cannot bear good fruit, and because the principle which underlies every divorce system is evil, hence the laws based upon that principle must necessarily be ruinous in their effects. Every government that enacts divorce laws takes it as a fundamental principle that marriage is a merely civil contract, and that, as such, it comes wholly within the jurisdiction of civil authority—not only, that is to say, as regards some of its social aspects, but in all that appertains to its very essence. Now this principle is false, even if we regard marriage as a purely natural contract, as has already been pointed out on a preceding page. The government can require the fulfilment of certain conditions for its legal celebration, it can regulate certain property rights consequent to the marriage contract, but with the permanency of the contract itself it cannot interfere. All such interference the Au-

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thor of lawful wedlock has reserved to Himself, and if any power on earth ventures to ignore this reservation, it thereby prepares the way for society's undoing.

VI.

At this point of our discussion the question naturally suggests itself, what can be done in order to avert the ruin with which our divorce system threatens society? Dearly as we may love our country, we cannot shut our eyes to the ravages caused by this terrible evil. Nay, the more intense our love of country is, the more fully must we be awake to the dangers that threaten it. and the more intent must we be upon trying to devise some remedy. If a complete cure of this social evil be impossible, there must be at least some way of mitigating its virulence, and of thus averting some of its more serious consequences.

It is this many of the nation's best men are attempting all the land over, although without any apparent sign of immediate success. The first effort of these men, here to be noticed, is their strong advocacy of Uniform Divorce Legislation. Reforms along these lines have been under discussion over a quarter of century, but at the meeting of the National Congress on Uniform Divorce Laws, held at Philadelphia, Nov. 13 and 14, 1906, they took a more definite shape. A form of statute, embodying the principles formulated by the congress on the subject of annulment of marriage and divorce, was presented and adopted. Furthermore, as the Federal Congress can apparently not deal with this matter, efforts have been concentrated upon securing a nation-wide adoption of this statute under state legislation. As a result of these efforts, pressure has been brought to bear upon State Legislatures, and it seems not altogether improbable that some sort of uniformity in divorce legislation may finally be secured. Especially as the causes provided for in the statute are now the law in forty States of the Union.

That the adoption of this statute by all the States would have a beneficial effect is obvious. For it would at least abate the scandal of migratory divorces, and fix the status of all divorced persons on the same plane throughout the Union. But this would be practically all. Uniform divorce legislation is, indeed, much to be commended; but uniformity alone will not stop the divorce mills. This is quite evident from the fact that over 90 per cent of the divorces granted during the twenty-year period, from 1886 to 1906, were secured on the plea of one or another of the five causes provided for in the proposed statute. These causes are: (a) Adultery; (b) Just imprisonment for two years; (c) Extreme cruelty, which renders cohabitation unsafe; (d) Wilful desertion for two years; (e) Habitual drunkenness for two years. It is true, indeed, that two of these causes, cruelty and drunkenness, are somewhat restricted in their operation by the addition of "extreme" and "for two years," but that will make little difference in their practical use.

In other quarters it has been suggested to diminish the statu-

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tory grounds for divorce, it being expected that thereby divorce may be diminished in proportion. This suggestion has the support of many Protestant divines, who would allow absolute divorce only in cases of adultery and malicious desertion, which, they contend, are grounds authorized by Scripture. Apparently such a restriction would make for considerable improvement. Divorce statistics of the last forty years, when studied in connection with contemporaneous divorce legislation, do in many instances point to the conclusion, that the more numerous the grounds are for which divorce may be granted, the more rapid also is the increase of divorce cases. Yet, at the same time, it must also be remembered that there is repeatedly a phenomenal increase of divorces whilst the statutory grounds remain the same. Hence there does not seem to be a necessary connection between the number of causes for which divorce may be obtained, and the number of divorces actually secured during any given period of years.

And this would likely be very apparent if divorce were restricted to the two grounds here suggested. For whatever may be said about adultery, facts show that desertion is in great favor with divorce candidates, as was pointed out above. Hence the likelihood would be that all those divorces which are now granted for cruelty, violent temper, non-support, etc., would thereafter be secured on the plea of desertion. The wife would, indeed, no longer be able to sue for divorce just because her husband cut off her bangs, nor the husband, because his wife struck him with her bustle; but both husband and wife could still make these heinous offenses the occasion of separation, and thus, after the specified time had elapsed, obtain a divorce on that score, which would serve their purpose almost as well in the end.

Hence, to mend matters perceptibly, desertion must evidently cease to be a sufficient cause for divorce. This, however, is not likely to be brought about at least in the present state of public opinion. For the sight of a wife deserted by her husband, and thus, as is often the case, reduced to condition of complete helplessness, unless she be allowed to marry again, appeals too strongly to our American sense of doing the square thing to fail of obtaining relief. Whatever particular States may do in this matter, it is extremely improbable that the nation as a whole can be induced to strike desertion from its statutes as a sufficient ground for divorce; and as long as this cannot be effected, there is little hope for improvement from this source.

But suppose desertion were universally done away with as a sufficient ground for divorce, what would be the result? Would the divorce evil practically cease to exist? Not that; although considerable improvement would undoubtedly be effected. According to government statistics, of the 945,625 divorces granted during the twenty-year period from 1886 to 1906, 153,759, or 16.30 per cent, were secured on the plea of adultery. This would give us a yearly average of 7,688 divorces, which is certainly a vast improvement upon our present yearly average of 47,281. But this, it must be borne in mind, is on the supposition that no

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other cause for divorce were recognized in any of the States. For if some of the States were to retain any other grounds, many discontented couples would settle there for the time being and thus secure divorce on easier terms, as the existence of our Western Divorce Colonies sufficiently proves.

Furthermore, if adultery were universally recognized as the sole sufficient ground for divorce, it is highly probable that divorce statistics would soon show a phenomenal increase of conjugal infidelity. And this, first of all, because many divorces that are now obtained on the plea of desertion, non-support, etc., might have been truthfully secured for adultery. Most men and women choose the more honorable of two available means, if it will serve the same purpose; hence under present conditions many cases of conjugal infidelity are kept from the knowledge of the court, and other causes are substituted. But if adultery were the only cause for divorce, it would be urged by many who now shrink from pleading it to obtain relief.

Again, it is not at all unreasonable to suppose that under these conditions some would go so far as to violate conjugal fidelity for the very purpose of obtaining a divorce. This Chancellor Kent called attention to years ago, as a result of his judicial experience. "I have had occasion to believe," he said, "in the exercise of judicial cognizance over divorce cases, that the sin of adultery was sometimes committed on the part of the husband for the very purpose of divorce." The same opinion was some years past expressed by a Bishop of the Episcopal Church with regard to some of his own flock. Nor need we suppose that the sin of adultery has been committed in every case where divorce is granted on this plea. It is a ground which of its very nature, can usually be proved only by circumstantial evidence, and, given a determined will on the part of the so-called innocent party, together with the ready co-operation of a clever and unscrupulous lawyer, charges can be trumped up that would ruin the reputation of a saint. Once in a while cases of this kind are brought to public notice, and how many more escape all publicity no one can tell.

Hence uniform divorce legislation and restriction of divorces to one or two causes, although highly commendable, alone will not suffice. There is urgent need of other reforms as well. And the first of these touches the constitution of our divorce courts. For although Mr. Bryce's statement, that "in most States jurisdiction over divorce cases is vested in the county courts, whose ill-paid judges are rarely men of professional eminence," is not entirely correct, nevertheless his scathing criticism of the incompetency of our divorce judges is in too many instances founded on obvious facts. To suppose that every one of the nearly three thousand judges, who decide divorce cases in the United States, is competent to deal with a matter of such far-reaching consequences, is more than the political position of many of these judges warrants. There are, no doubt, well-meaning men among them, and able men as well; but many also there are who owe their position to political influence rather than to professional eminence, and who, like a cer-

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tain Utah judge, are too ready to perform a "neighborly act" when importuned by divorce candidates.

The Rev. H. Loomis said years ago of the Connecticut divorce courts: "It would be difficult to conceive of anything called a court, constituted with more inevitable tendency to dangerous laxity of practice, than the superior court extemporized, during the few minutes before or after one of its ordinary sessions, into a court of divorce." And so it is practically all over the Union. It is not only the incompetency of the judge, but the press of business as well, that all too frequently makes the rendering of divorce sentences a judicial farce.

What precise remedies should be applied to this condition of things, it is perhaps not so easy to say; although, if common sense alone were consulted, they would seem obvious enough. If we must have divorce courts, why not make them divorce courts in the full sense of the term? Courts, that is, for this express purpose, in which no other cases are ever tried. This need not necessarily mean an unreasonable multiplication of courts, as half a dozen for each State would be amply sufficient. Again, if under present conditions, the judges who handle this delicate matter are often incompetent, why not make such provisions that only the most capable and discreet men in the legal profession be eligible to the position? This may make it necessary that the positions should be filled by appointment and that a high salary should be attached to them, but that would seem fully justified by the need there is of some such radical reform. Whatever be the legal aspect of this, it certainly commends itself to common sense.

Somewhat similar reforms seem to be called for in regard to divorce proceedings. When we consider that at present nearly 90 per cent of divorce cases go by default, with only one party represented, we cannot help inferring that something is "rotten in Denmark." Even if things are not everywhere in so deplorable a condition as in Reno, for example, where "divorces are granted on the utterly uncorroborated testimony of one party to the suit," it certainly is in most places bad enough to call for radical reform. Thus according to the letter of the law it is commonly required that notice of the impending action be served on the defendant who happens to be absent, but in practice this amounts often to nothing more than publication in the local newspaper; or if formal notice is served by the plaintiff's lawyer, care is taken that it shall not reach the defendant in time to stay proceedings. Does not this look very much like a legalized form of stealing a person's husband or wife whilst men are asleep?

To remedy this terrible condition of things it is evidently necessary to require personal service upon the defendant wherever practicable, and when the defendant cannot be served personally, to insist upon due notice being sent him, or at least upon proper publication if his address cannot be ascertained. Much good, in this respect, would also result from the adoption of a suggestion made by the National Congress on Uniform Divorce Laws in reference to all decrees for absolute divorce, to the effect that "a decree

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nisi shall be entered, which shall become absolute after the expiration of one year from the entry thereof, upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary."

Other suggestions made by the same Congress, that "in all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case," that "no decree for annulment of marriage, or for divorce, shall be granted unless the cause is shown by affirmative proof aside from any admission on the part of the defendant," and that "no record or evidence in any case shall be impounded, or access thereto refused," also commend themselves for general adoption and would greatly improve the present chaotic conditions of our divorce proceedings.

Finally, to all these proposed reform measures should be added the elimination of migratory divorces, which, so long as we have no uniform divorce laws, necessarily tend to counteract the effects of restrictive legislation in individual States. To bring about this elimination, it is necessary to make the jurisdiction of the court over divorce cases depend on the bona fide residence in the State of at least one of the parties to the suit, and this bona fide residence should be positively proved to have been of considerable duration before the commencement of the action. At present most States require one year, some only six months, and a few two years or at most three. It has been suggested that two years would be sufficient, provided it can be shown to be bona fide and not merely for the purpose of obtaining a divorce on a plea that is not recognized in the home State.

VII.

Besides these measures, which aim at checking the divorce evil by effecting necessary reforms in our courts and their proceedings, others might be taken which would be remedial in an indirect way. The first one of these is to do away, as much as possible, with inconsiderate and hasty marriages. For this purpose it would be very desirable to require a certain interval of time between the application for a license and its issue by the court. The application itself should be made public, so as "to give a chance for the bringing forward of objections." This appears all the more reasonable as the marriage license was originally intended only as a special dispensation with the banns, which have in our country practically fallen into desuetude. If the interval were long enough, say from ten to fifteen days, many a rash marriage would thereby be prevented.

This measure has been strongly recommended by the National Congress on Uniform Divorce laws, and has subsequently been adopted by a number of States. Thus the law of Massachusetts on this subject, in force, since January 1, 1912, is as follows: "Persons who intend to be joined in marriage in this Commonwealth shall not less than five days before their marriage cause notice of their intention to be entered in the office of the clerk or register of the city or town in which they respectively

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dwell, or, if they do not dwell within the commonwealth, in the office of the clerk or register of the city or town in which they propose to have the marriage solemnized." A similar law, preferably, however, with greater insistence on proper publication, should be introduced in all the States.

Closely connected with this measure, and partly, at least, intended for the same purpose, is the proposed abolition of so-called common law marriages, which are usually defined as "a contract, without any ceremony, religious or civil, of a man and woman to take each other as husband and wife, followed by cohabitation and reputation as such." They are at present still recognized as valid in nearly one-half of the States, although there is everywhere a growing tendency to have them declared null and void. That the recognition of their validity enables minors to contract marriage against the will of their parents or guardians is obvious, and therefore, for this reason as well as for others, it appears very desirable to have them abolished.

In this connection attention might also be called to the prevailing laxity in issuing licenses to persons not of legal age. According to the law it is usually required that the parents or guardians of the parties under "lawful age" give their consent, either personally or in writing, before license may be issued; but this provision of the law is frequently evaded by the mere assertion of the applicants that they are of age. Such assertion may indeed be contested by the issuant of the license, and, if the applicants have no parents or guardians living, they may be required to confirm their statement by affidavit or oath; but this is either dispensed with or made ineffective for want of prosecution if it be discovered that the statement was false. Obviously these provisions of the law should be fortified by a severe sanction, and then rigorously enforced.

Next to these legal measures, intended primarily to prevent inconsiderate and hasty marriages, and thus indirectly to check the divorce evil, much good along the same lines may also be effected by creating a strong public opinion against divorce. As experience teaches in a hundred different ways, public opinion against any prevailing social evil is the most effective means of removing it, and the present lack of such an opinion against divorce has much to do with the activity of our divorce courts. A few decades ago, the securing of a divorce meant exclusion from good society; today divorcees are admitted to the social functions of the most exclusive set. We have become very tolerant in this matter, but we have lost much in true charity. To forgive is indeed divine, but to encourage in evil doing is diabolical; and every social support we give to divorcees is an encouragement for others to follow their example. With vast numbers of these unfortunates it is the *vox populi,* the force of public opinion, that decides the issue.

It is true, anything like a universal social interdict against divorcees must seem cruel, yet it is well to bear in mind that sometimes seeming cruelty is real kindness. When we are as-

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sured that in this fair country of ours every year some fifty thousand homes are broken up by the action of our divorce courts, and that at least the same number of children are by an act of the law deprived of one of their parents, there looms up before us another side of the question that puts the real authors of all this wreckage in a class little different from that of common criminals. We pity the forlorn condition of orphans; we sympathize with the poor waifs who have never experienced a mother's tender love or a father's devoted care, but what pity, what sympathy can alleviate the cruel lot of those other wretched beings who are made orphans during the lifetime of their parents, and who must sooner or later come to look upon the authors of their existence as the cause of their ruin? To ostracize their unnatural parents may be cruelty, but it is a cruelty that spells kindness for thousands of little ones yet unborn.

Marriages may at times turn out to be very unhappy; in rare instances there may be sufficient cause for legal separation: but to set aside the bonds that alone can enable the offspring of such marriages to look without a blush of shame into the face of father and mother, and to set them aside, as is so often done, for little or no reason, deserves nothing less than exclusion from Christian society. If this exclusion inflicts pain upon the delinquents, as needs it must, this very pain will act as warning to others whom an ill-advised sympathy with divorcees would have emboldened to practice a similar cruelty against their own helpless offspring. Were this social interdict against divorcees universally enforced, more good would come of it than the most stringent divorce legislation can ever hope to effect.

But here the difficulty is to create such a public opinion. Our people have become so accustomed to seeing these tragedies enacted in their midst that their moral sensibilities in this respect are hopelessly blunted. Divorce obtrudes itself on their notice everywhere; not only in the courts, but in the newspapers and magazines and books they read, in the theaters they frequent, in the houses of friends they visit. It is presented to them as a national institution, almost as honorable as marriage. If our Press and our Playhouses could be induced to take a firm stand against this terrible form of social evil, a gradual change of public opinion might be brought about; but unfortunately, with a few laudable exceptions, they seem bent upon adding fuel to the flame. Marriage is spoken of and represented as a thing to trifle with, and divorce is held up to the public gaze as the cure-all of domestic grievances. And so, instead of guiding their patrons to a higher conception of the sacredness of family life, they are sweeping away whatever vestige of respect for this most sacred of nature's institutions has come down to us from a saner age. They are as hopeless as the public to whose passions they pander.

Hence, although considerable improvement may be effected by a determined and conscientious use of the several measures above suggested, anything like a thoroughgoing reform cannot reasonably be looked for until in God's own wise ways there is

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brought about a change of men's hearts—until men be made to understand practically that the spirit must dominate over the flesh, that the Creator must rule over the creature. Only when religion, which is now with so many but little more than a name, shall again be allowed to enter as a principle of action into men's daily lives, will marriage once more be recognized as nature's most sacred institution. Then even the most frivolous will see a meaning in that solemn scene which is now witnessed almost exclusively on the occasion of Catholic marriages, when, with clasped hands, bride and bridegroom stand before the altar of God, and, in presence of their future Judge, take one another as husband and wife, to have and to hold from that day forward, for better, for worse, for richer, for poorer, in sickness and in health, till death do them part. This, as is obvious, means a return to the Catholic view of marriage, and such a return alone can completely cure the national evil of divorce.

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